

4:07 pm, Mar 23, 2020

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
JACKSON, : 18-cv-03007-JS-AKT
Plaintiff, :
 :
- versus - : U.S. Courthouse
 : Central Islip, New York
 :
NASSAU COUNTY, et al., : March 6, 2020
Defendants :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR PROCEEDINGS
BEFORE THE HONORABLE A. KATHLEEN TOMLINSON
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: Calling case 18-CV-3007, Jackson v.
2 Nassau County, et al.

3 Please state your appearance on the record.

4 MR. HARVIS: For the plaintiff, Gabriel Harvis.
5 Good morning, your Honor.

6 THE COURT: Good morning.

7 MS. FETT: Good morning, your Honor.

8 Baree Fett for the plaintiff.

9 THE COURT: Good morning.

10 MR. LOOMBA: Good morning, your Honor.

11 Lalit Loomba for the County defendants from
12 Wilson Elser.

13 MS. MASTELLONE: Good morning, your Honor.

14 Janine Mastellone for the County defendants
15 from Wilson Elser.

16 THE COURT: Good morning.

17 MR. MEISELS: Good morning, your Honor.

18 Peter Meisels from Wilson Elser for the County
19 defendants.

20 MR. CORBETT: Good morning, your Honor.

21 Keith Corbett of Harris Beach for the Village
22 of Freeport, and I have with me today my associate,
23 Stephanie Tanzi.

24 MS. TANZI: Good morning, your Honor.

25 MR. CORBETT: Good to see you again.

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1 THE COURT: Good morning.

2 All right. We have some ground to cover this
3 morning, and obviously this is my first go-round with all
4 of you. Just as a preliminary, as you can see, we don't
5 have a court reporter here. However, the courtroom is
6 wired, and all of these conferences are digitally
7 recorded. So that means the most important thing I need
8 from you this morning is if you're speaking, get that
9 microphone as close to you as you can. You can pick them
10 up. They move. You can adjust the level of it, but
11 please make sure you're on top of the microphone when you
12 speak. All right?

13 I have some things I want to go through with
14 you from the submissions that you made. I will ask you
15 some questions along the way. Then I will give each of
16 you an opportunity to tell what else you think needs to
17 be addressed today.

18 So in preparing for this, you know, I have made
19 some substantial notes for myself. So I am going to ask
20 you to bear with me, and let me get through my list, and
21 then I will take your list, all right? So we'll go from
22 there.

23 All right. I know there's been a dispute about
24 the depositions, and apparently the deposition schedule
25 or proposed schedule that was circulating with apparently

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1 some scheduling done that is now out the window, so we'll
2 get to that in just a few minutes.

3 Judge Seybert, since the case after her having
4 seen you with some specific directives obviously, one of
5 which was to talk about this proposed amended complaint.
6 In looking now and I'm taking my lead off DE-269, which
7 is the February 26th letter, lengthy letter from Wilson
8 Elser -- let's see -- specifically from Mr. Loomba, and I
9 had previously gone over the January 22nd letter, which
10 is at 263, from Mr. Harvis.

11 So the first thing is obviously there are some
12 folks now out of this case going forward. There was
13 supposed to, I think, have been a stipulation indicating
14 that. It doesn't appear that any action has been taken
15 in that regard, and that's one of the first things we
16 need to get resolved.

17 So whatever the existing, and I say existing,
18 I'm not taking into account right now the proposed second
19 amended complaint, whatever the existing caption should
20 be with who is in, and who is out, I'm giving you ten
21 days to get that filed, all right?

22 And let me just explain how to make this work
23 for everybody. You're going to put the caption up to the
24 point of these agreed upon changes. You're going to file
25 it with that caption, and then in the body of the

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1 stipulation, you're going to put the existing, what you
2 now agree, is the existing parties who are in the case.
3 Again, not including the issues revolving around the
4 second amended complaint. That will make it easier for
5 us to sign off on, and also for the clerk's office to do
6 what they need to do.

7 Now I know that the plaintiffs are looking for
8 permission to file a second amended complaint. The
9 defendants don't want -- don't believe there are grounds
10 for a second amended complaint. I know part of what
11 Judge Seybert's concerned about, I'm concerned about, and
12 some of you expressed concern about, is you know,
13 proceeding in this case is an economically feasible
14 manner.

15 There's been a lot of back and forth here since
16 this case was undertaken, including motion practice, and
17 the expenses just keep digging a bigger hole here. So
18 honestly, I want to propose something to you, which I
19 have been thinking about, and that is instead of having
20 duplicate motion practice with requests, for example, a
21 motion to amend, and then opposition being filed, and
22 then a reply, and then a decision by Judge Seybert, which
23 we know regardless of how that goes, if in fact she
24 allows the amendments, then there's going to be motion
25 practice to dismiss the second amended complaint.

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1 I would like to see if we can streamline this
2 process without anybody feeling that their rights were
3 being compromised, and what I am going to suggest to you
4 is I don't expect the defendants to say that they approve
5 of this, they accept this, or they think that this is an
6 okay thing, but it certainly seems to me there should be
7 some way to formulate the wording in a stipulation that
8 says, for example, the plaintiff has proposed this. The
9 defendants do not agree with the assertions, and
10 allegations made in that second amended complaint, and
11 believe that those claims are not viable, nor the
12 individuals who seek to be added should be added, but in
13 an effort to move this process forward, you're not going
14 to prevent the amended complaint from being filed, with
15 the clear understanding that once it is, you're free to
16 proceed then to move to dismiss that second amended
17 complaint, which brings us down to one set of motion
18 papers, as opposed to two, and I would like to at least
19 now get some feedback on that issue. And I'm sure that
20 you're not objecting to that.

21 MR. HARVIS: No, that sounds good to us, your
22 Honor.

23 THE COURT: All right. You can preserve all of
24 your rights in the stipulation. I don't really think
25 that's an issue.

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1 MR. CORBETT: Your Honor, would you like a
2 response? I'm sorry.

3 THE COURT: Sure.

4 MR. CORBETT: Sure. And again, Keith Corbett
5 for --

6 THE COURT: Your colleagues are conferring, so
7 you can respond while they're conferring.

8 MR. CORBETT: That's great. Thank you, your
9 Honor. Keith Corbett again for the Village of Freeport.

10 And your Honor, we completely concur with the
11 presentation you made, and obviously what you're looking
12 to do. One of our concerns has always been let's do this
13 in an economically feasible manner, and an orderly
14 manner, so this case could be prosecuted, and defended
15 the way it should be as most cases are.

16 From the beginning, from our first conference
17 with Seybert, we were trying to streamline this, and if I
18 could just backup a little bit to give you some facts,
19 and some procedures that went on in this case, then I
20 will get some of the questions you asked.

21 You know, the initial --

22 THE COURT: And just let me say to you, I have
23 read through everything, so I have a --

24 MR. CORBETT: I will make it quick, your Honor.
25 I don't have to --

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1 THE COURT: I was going to say, you can
2 streamline your response, understanding that I have
3 looked at everything. Go ahead.

4 MR. CORBETT: Okay. The original complaint
5 that started in this action named various police
6 officers, at no time did identify if they were Freeport
7 officers or Nassau County Police Department officers. At
8 no time did it distinguish which claims it were against,
9 it was just blunderbuss against everyone. It was very
10 difficulty to ascertain who was who.

11 At Judge Seybert's direction at the first
12 conference, she looked at I believe Mr. Meisels, and
13 myself, and said help them out, figure out who is there.
14 So we didn't want to load the gun to shoot ourselves, but
15 we did. We did.

16 THE COURT: Uh-hum.

17 MR. CORBETT: And we went back and forth with
18 plaintiff's counsel a few times. Ultimately, he reduced,
19 there were originally 19 individuals that I believed were
20 Freeport, tough to find 24 years ago, that we answered
21 for. He reduced that down to 11, even though we had went
22 through documents showing that none of these individuals
23 have anything to do with this case.

24 THE COURT: Uh-hum.

25 MR. CORBETT: And it's been our position from

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1 day one, as your Honor knows from multiple cases you've
2 had, in Nassau County, homicides are completely
3 controlled, overseen, investigated, prosecuted, by the
4 County of Nassau. I mean, that is not disputed in this
5 case.

6 THE COURT: Right.

7 MR. CORBETT: The Village of Freeport does not
8 have the means to do homicides investigations. They were
9 not in charge of this. They were not responsible for
10 this. It's all overseen by the County. And we've
11 continually tried to explain that to plaintiff's counsel.

12 Thereafter, even though most of these people
13 are not in the case, we get that second complaint, still
14 going off the various individuals. Finally, now we're at
15 a place where there's that he's requesting a second
16 amended complaint.

17 For the Village's position, we don't have an
18 issue with him filing a second amended complaint. It
19 narrows it down to two individuals in his -- in the
20 plaintiff's mind, who are left in Freeport. We believe
21 there are three additional claims he tries to add in that
22 we don't think are permissible, because of the relate
23 back doctrine, and we don't think they're even going to
24 survive.

25 That being said, the complaint now suffers from

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1 very -- the exact same deficiencies as the first two. He
2 does not lay out any factual basis to keep the two
3 individual Freeport officers in. He does not lay out any
4 legal basis to keep them in. If you look at it, he
5 actually only mentions the Freeport officers in a 192-
6 paragraph complaint, over 44 pages, he mentions a
7 Detective Zimmer three times, and a Police Officer
8 Melendez four times.

9 There's nothing in here that could actually
10 establish an intention infliction of emotional distress,
11 malicious prosecution, conspiracy. We've had discovery
12 in this case. The Village had finally worked out the
13 confidentiality stipulation with the County. There were
14 some issues there for a while. The plaintiffs received
15 thousands of pages of documents from the County. Many of
16 the documents that County gave were Freeport documents,
17 because that makes sense. Freeport would've given
18 anything to the County since they prosecuted the case,
19 and had the case.

20 So it's still our position that the complaint,
21 though we don't object to the filing of it, we will so we
22 have in dispositive motion practice. The issue we're
23 wrestling with, and it's really not us, we're trying to
24 work with the plaintiff on is, there's no basis for
25 Freeport to be here, and we've spent -- I mean, the

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1 taxpayers of Freeport have spent significant funds
2 already involved in two nonparty depositions, paper
3 discovery, and the whole matter.

4 I mean, my suggestion now to get to the
5 questions that were asked, to a stipulation of
6 discontinuance without prejudice without us. I will even
7 have them appear for a deposition and when it's again
8 shown for the 90th time, there's no involvement here on
9 Freeport that would attach to any of these claims, I
10 would ask that the case be completely dismissed.

11 To force Freeport to still continue, there are
12 still interrogatories that were served upon us for
13 officers that he's no longer naming as defendants if this
14 complaint gets served.

15 There's no need to keep Freeport around.
16 There's no dispute that we were not involved in the
17 investigation, and the prosecution of Mr. Jackson.

18 More pointedly to this case, the entire --
19 really the crux of the case is Mr. Jackson was released
20 from prison, and he was released because allegedly two
21 statements that were taken by Nassau County police
22 officers were not in the file of the Nassau County
23 District Attorney.

24 The plaintiff obviously has a Brady violation
25 there. Freeport didn't take those statements. Freeport

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1 wasn't involved in those statements that's been shown in
2 the documents that have been disclosed, it's been shown
3 by representations of counsel, it's been shown even in
4 the nonparty witnesses, which were deposed a few weeks
5 ago.

6 The fact of the matter is, there's no basis for
7 Freeport to have to continue to fund to defend a case,
8 what we believe is frivolous against them, based upon the
9 process and procedures employed in Nassau County, and the
10 facts that have been disclosed.

11 So again, we are not objecting to the filing of
12 the amended complaint. We do reserve an objection
13 because we don't believe three additional claims should
14 not be instituted, and ultimately, it serves the same
15 deficiency, we will be (indiscernible) a motion to
16 dismiss.

17 If there's a way, and we ask for the Court's
18 guidance because at meet and confers, we haven't gotten
19 very far, as you could see from your docket, that we can
20 streamline this, so that Freeport could finally be out of
21 the case because there's really no basis for it, we're
22 happy to comply in any way we can to get there.

23 But I mean this case from the get-go has been
24 really a mess because of the way the pleadings were put
25 in, and trying to find who they're going against.

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1 But we would like to have a briefing schedule
2 if possible to set today, and we would ask that
3 regardless of the outcome, a revised discovery schedule
4 be instituted today because discovery has kind of been
5 all over the map with all the letter motions, dispositive
6 motions -- I think there are motions for sanctions.

7 I mean, there's no need for all of this back
8 and forth. We should be able to streamline it, and it
9 will let the plaintiff achieve what he needs.

10 THE COURT: All right. Well, I would like to
11 hear from plaintiff in response to that.

12 MR. HARVIS: Thank you, your Honor. Yes, so --

13 THE COURT: Stay seated.

14 MR. HARVIS: Thank you. Thank you, sorry.

15 THE COURT: Stay seated, please. Just again,
16 just get yourself on the mic.

17 MR. HARVIS: So yeah, so I am not sure exactly
18 how to respond to that. I mean I think your Honor has
19 reviewed the docket. I think it speaks for itself.
20 We've had issues from the very beginning with
21 noncompliance, and nonparticipation in this case by
22 Freeport.

23 THE COURT: Yeah, I get all that. I understand
24 what your arguments were. I want you to respond to what
25 I just heard as to why Freeport shouldn't be in the case.

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1 MR. HARVIS: Oh, thank you, your Honor. Yeah,
2 what we heard from Mr. Corbett was a series of
3 conclusions, statements that are unsupported anywhere in
4 the record. In fact, as the cases developed, our theory
5 of liability as to Freeport has become more and more
6 clear.

7 What we learned when we had the depositions of
8 the two eyewitnesses whose statements were suppressed,
9 which is what led to Mr. Jackson's exoneration, when we
10 had those depositions, we learned that -- and this is in
11 the first -- the second amended complaint that we
12 submitted, we learned that the off-duty police officer
13 who was drunk that night, and pulled his service weapon
14 on the shooter, was friends with the first Freeport
15 police officer that he met that night, a Robert Melendez.

16 Robert Melendez took the drunken, off-duty
17 police officer from the scene where he had taken his gun
18 out, and pointed it at the shooter, over to the houses on
19 the north side of Freeport, and went and canvassed that
20 whole area.

21 Then the off-duty police was taken back to a
22 Freeport -- the Freeport police station, and inside of
23 the Freeport police station, he called the NYPD, and told
24 them that he had been involved in this incident, and he
25 was specifically asked whether or not he was intoxicated

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1 because you're not allowed to draw your service weapon
2 when you're off-duty, and intoxicated. He told a lie
3 there. He said no, he wasn't.

4 And our theory of the case, and we think it's a
5 very cogent theory, is that the suppression of the
6 statements which led the DA to overturn the conviction,
7 were suppressed in order to avoid discovery of this
8 officer's misconduct.

9 Melendez's friend, who was drunk that night, if
10 anyone found out that he was drunk and he pulled his
11 weapon, that would have severe consequences for his
12 employment. So our theory of the case was that the basic
13 original reason why they decided to suppress not only
14 those two statements, but also subsequent information
15 that came in, that would have led back to that same
16 theory of the crime, the same witness statements that
17 were suppressed. And then --

18 THE COURT: So let me stop you for a second.

19 MR. HARVIS: Yeah.

20 THE COURT: So who suppressed the statements,
21 first of all, and secondly, I mean, some of this I know
22 what the answer is, but I want it on the record anyway,
23 and secondly this off-duty drunken police officer what
24 police force is he on?

25 MR. HARVIS: NYPD, your Honor.

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1 THE COURT: Okay.

2 MR. HARVIS: And we're trying to get the bottom
3 of who suppressed them. I mean, we haven't done any of
4 the actual defendant depositions yet, and part of that is
5 because we've had such a difficult time getting records,
6 which is really the initial thing that we need.

7 But it's the off-duty -- bolstering this theory
8 as to Freeport is the fact that the off-duty police
9 officer who himself is from Freeport, he grew up there,
10 he looked at the list of the officers that were at the
11 crime scene, and he ticked off half a dozen Freeport
12 officers that he knew from growing up, and living in
13 Freeport.

14 So we have a very strong sort of blue circle of
15 silence around him, of people that would have a reason to
16 want to assist him. And then that's one defendant,
17 that's Officer Melendez.

18 And then looking at Freeport's participation I
19 guess the best lens to view it through, Freeport never
20 gave us initial disclosures even in this case. We never
21 learned who they were relying on to support their claims,
22 or what the subjects of that information was. We spent
23 like a year trying to litigate that issue.

24 And as a result, we never --

25 THE COURT: They never gave them to you, or

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1 they never gave you what you considered to be sufficient
2 disclosures.

3 MR. HARVIS: Well, I think they -- they gave us
4 late disclosures, initial disclosures, and they were
5 incomplete. They didn't give the subjects the
6 information. And I think they just listed the
7 defendants. I think that's what the list was.

8 And so what came out from the Nassau County
9 production was an audio recording which is extremely
10 telling, and we filed a letter motion based on it to
11 Judge Seybert, and on that recording, we hear a Freeport
12 detective because they're trying to say that Freeport had
13 no role in this murder investigation, three months after
14 the crime, we have a 36-minute recorded interview between
15 a Freeport detective, and an eyewitness to the murder who
16 may have actually seen the actual perpetrator of the
17 murder, and in that conversation, he explains that
18 Freeport and Nassau County work hand-in-hand, in
19 investigating the murder for two weeks. He describes
20 after the crime that for two weeks, the Nassau County
21 Detectives were basically working out of the Freeport
22 police station, trying to solve this crime, and that he
23 himself, Arthur Zimmer, who is now deceased, the Freeport
24 officer, that he and Jerl Mullen, who was one of the
25 Nassau County homicide detectives, were working hand-in-

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1 hand, trying to solve this murder.

2 And so from our view, we think that there's an
3 extremely compelling argument as to that interview that
4 was recorded being suppressed by Arthur Zimmer. That's a
5 Brady violation, to Melendez, likely playing a role,
6 plausibly playing a role in the suppression of the
7 initial eyewitness statements. That's a Brady violation.

8 And then really, also the conspiracy claim,
9 because we have two police forces here. Normally, the
10 argument -- the counter argument to a conspiracy claim
11 would be the intercorporate conspiracy doctrine, but
12 because we have two different police departments here,
13 that simply doesn't apply.

14 And so we think that the facts read the way
15 that they're going to be at a motion to dismiss, which is
16 with all of the inferences drawn in our favor, are
17 clearly going to plausibly support a conspiracy
18 allegation.

19 And all of this is to say nothing of the state
20 law claims, because we filed notices of claim, and
21 therefore independent of any Freeport Village employee's
22 personal involvement for the purposes of 1983, they are
23 responsible under respondeat superior for the tortious
24 conduct of any of their employees.

25 So we have also, not to say nothing again of

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1 the Monell allegations that we have against Freeport as
2 well, so we think that there are like, I would say half-
3 a-dozen or so, valid claims against Freeport, and this is
4 all kind of to go back to January 2018, when we were in
5 front of Judge Seybert, and these same arguments were
6 raised, and Judge Seybert, as Mr. Corbett said, looked at
7 the defendants, and she said you help them. Whatever you
8 have in your offices, you give it to the plaintiff, so
9 that he can figure this out.

10 And do you know what I got? I got nothing from
11 Freeport, no documents from Freeport. I think I got
12 initially 23 pages from Nassau County. They've produced
13 a lot since then and we want to give Nassau County credit
14 for that.

15 THE COURT: Did you move to compel? Did you
16 come back to Judge Seybert and move to compel?

17 MR. HARVIS: Well, we went back to Judge Brown.
18 We had two conferences in front of Judge Brown and they
19 were discovery orders entered, and we're going to get
20 that when it's our turn to raise issues, but we think
21 there was noncompliance there by Freeport, and actually
22 you'll see if you look at the docket, sometimes where
23 Judge Brown goes so far as to bring up the word sanctions
24 because there's --

25 THE COURT: Yeah, I did see that.

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1 MR. HARVIS: -- noncompliance. And so we think
2 that what this is is basically -- and what it has been,
3 and I think Nassau probably has something to say about
4 this as well, it's really a smokescreen because in order
5 to avoid valid discovery demands that we're serving, very
6 carefully drafted, targeted demands, intended to answer
7 the kinds of kinds of question s that your Honor is
8 asking, and we get literally no response, not -- it's not
9 that they're bad responses from Freeport, we get nothing.

10 We served demands, and we're not talking about
11 defendants that are now out of the case.

12 THE COURT: Okay, let's get to that.

13 MR. HARVIS: Yeah, we'll save that.

14 THE COURT: And let's just deal with what we're
15 dealing with for now, all right?

16 MR. HARVIS: Sure. So thank you, your Honor.

17 THE COURT: So it's clear to me after listening
18 to this, there's no bridging the gap between you two, so
19 I am going back to my original statement which I would
20 like to see if we can craft a stipulation to deal with
21 the circumstances that allows the case to move forward
22 now to motions to dismiss the second amended complaint,
23 but I do want to give Nassau County an opportunity to
24 respond, as well.

25 MR. LOOMBA: Good morning, your Honor.

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1 THE COURT: Yeah.

2 MR. LOOMBA: And I'll stay seated. Thank you.
3 Yes.

4 I guess the County's position on your
5 suggestion is that we would consider the stipulation so
6 that the Court would only have to address these arguments
7 once, not you know, once on an opposition to a motion to
8 amend, and then a second time on our motion to dismiss.

9 Obviously, you can only get one amendment
10 without a stipulation or a court order. We would want to
11 condition any agreement on the County's part to allow the
12 filing of the second amended complaint, on limitations in
13 discovery going forward because we believe that some of
14 the claims, many of the claims, fail to state a claim,
15 and that that's why we --

16 THE COURT: I get it. You're hoping they get
17 knocked out on the motion to dismiss, and then you don't
18 have to produce anything more.

19 MR. LOOMBA: That's correct, your Honor.

20 THE COURT: Okay.

21 MR. LOOMBA: I would say that the County has
22 produced --

23 THE COURT: I'm good that way. Go ahead.

24 MR. LOOMBA: The County has produced quite a
25 lot of documentation, as I think the plaintiff has

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1 acknowledged. There are, I think, nine or -- plus two,
2 eleven, claims for relief in their second amended -- or
3 proposed second amended complaint, and we have arguments
4 addressed to the sufficiency of not all of them, but of
5 the majority of them. And we would -- so if -- the
6 County's position on your proposal is a conditioned yes.

7 THE COURT: All right. So after having heard
8 what you just said, I don't have a problem, because I
9 don't want to halt discovery all together, but in terms
10 of building the language of the stipulation, I don't have
11 a problem with having the County respond as we talk more
12 about the discovery process, to the claims that you're
13 not contesting going forward, at this point, and reserve
14 your rights.

15 And what I will let you do is if you need to
16 serve another round of discovery, if those claims remain
17 in, then I will let you do that. All right?

18 MR. HARVIS: Well, if I may, your Honor, I mean
19 Judge Seybert specifically ordered when we were
20 originally discussing this in January of 2018,
21 specifically ordered that discovery should proceed while
22 the motion --

23 THE COURT: I read, I read well. I got her
24 orders, okay?

25 MR. HARVIS: Okay.

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1 THE COURT: I'm not saying discovery is not
2 proceeding. I'm saying to you there may be some
3 limitations on what discovery gets done, okay?

4 MR. HARVIS: Okay.

5 THE COURT: All right. It seems to me -- let's
6 see -- one, two, three, four, five, six seven -- seven
7 people should be able to craft a stipulation and get it
8 filed in the next two weeks, all right?

9 And so that means what I am going to do right
10 now is set up a schedule for the motion to dismiss.
11 Okay? Just bear with me for a minute. Once that stip
12 comes in, excuse me, it will get so ordered, assuming
13 everything is in order, which I fully expect will be the
14 case. As I said, you're allowed to reserve your rights
15 to the extent we discussed here this morning.

16 Once that's in, and it's so ordered, we'll deem
17 the second amended complaint to be the operative
18 proceeding -- excuse me, the operative pleading in this
19 case at this point. All right.

20 As far as the defendants are concerned, if you
21 two want to talk to each other, or take a motion, I'm
22 fine with that, but how long do you need to make your
23 motion? It's not like you have a surprise here. You've
24 had the second amended complaint.

25 MR. CORBETT: Your Honor, we could -- excuse me

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1 -- we could do this expeditiously. We could have a
2 motion submitted within 30 days or less.

3 Mr. Loomba?

4 MR. LOOMBA: Your Honor, just because of
5 schedules and motion schedules and other cases, I would
6 ask for just a slightly longer period of time.

7 THE COURT: Which is?

8 MR. LOOMBA: I would just propose April 17th.

9 MR. CORBETT: And your Honor, if I may?

10 THE COURT: Hold on a second.

11 MR. CORBETT: Yes, ma'am.

12 THE COURT: All right. That's roughly six
13 weeks. All right. I don't have a problem with that.
14 We'll leave it at April 17th.

15 Mr. Harvis, how about you? Opposition?

16 MR. HARVIS: Just because I'm opposing two
17 motions, your Honor, I would say three weeks if that's
18 okay.

19 THE COURT: Three weeks? That's fine.

20 MR. HARVIS: Thank you.

21 THE COURT: Let's see, 17th, one, two, three --
22 I will give you that weekend, which will put you at May
23 18th, all right?

24 MR. HARVIS: Thank you, your Honor.

25 THE COURT: And my guess is you'll want a

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1 reply?

2 MR. CORBETT: Yes, your Honor.

3 MR. LOOMBA: Yes, your Honor.

4 THE COURT: Okay. How is ten days? It's see.
5 Let me see with that is.

6 MR. CORBETT: Can we do June 1st, your Honor?

7 THE COURT: Well, ten days is actually ten
8 working days. If you want -- you want June 1st, that
9 will give you the weekends, that's fine.

10 MR. CORBETT: Thank you, your Honor.

11 THE COURT: And let's be clear here, you know,
12 short of life and death, I don't intend to extend these
13 dates, so --

14 All right. Let me go onto the next thing on my
15 list.

16 MR. CORBETT: Your Honor, if I may?

17 THE COURT: Yes.

18 MR. CORBETT: Judge, just responding to some of
19 the things that were said earlier, just for the record.

20 THE COURT: Yes.

21 MR. CORBETT: There are a lot of theories about
22 a lot of things, it doesn't mean you have viable claims
23 against parties, and we can get the transcripts of those
24 nonparty proceedings, so the Court could see them.

25 THE COURT: Uh-hum.

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1 MR. CORBETT: I mean, they knew each other
2 because they grew up in Freeport. They weren't friends
3 or anything like that. I didn't hear anything there that
4 would attach to any facts to any of the legal claims he
5 raised against Freeport as it relates to Bobby Melendez.

6 And again, you asked a question earlier well,
7 who suppressed those statements. Those very statements
8 it is undisputed, were taken by County police officers,
9 not Freeport police officers. The Freeport officers --

10 THE COURT: All right. Taken by the officers I
11 understand, but my question was who suppressed them.

12 MR. CORBETT: Understood. Your Honor, and if I
13 may, there were two statements that were taken by Village
14 of Freeport officers. Those were given to the County,
15 and those were all disclosed to the DA.

16 And what we're seeing through discovery is the
17 County is providing records to the plaintiff, and they're
18 providing all the Freeport records because Freeport,
19 because they were not the operative entity in charge,
20 gave everything to the County. They then went forward
21 with prosecutions, arrests, and everything forward. I
22 mean there's no basis in any way to connected Freeport to
23 those statements.

24 THE COURT: Okay. I understand that. We're
25 obviously not going to resolve the merits here today.

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1 MR. CORBETT: No, we're not, but thank you,
2 your Honor.

3 THE COURT: All right. And also, I am not
4 going to be the one who does that. The motion to dismiss
5 is going to wind up being before Judge Seybert, so --

6 MR. CORBETT: Yep.

7 THE COURT: But let's see what else we can try
8 to get resolved today. Just bear with me for a minute.

9 MR. HARVIS: Your Honor, if I may just while
10 we're still on the issue of the amended complaint being
11 filed.

12 THE COURT: Yes.

13 MR. HARVIS: There are two defendants who I
14 need to serve with that pleading in order for them to
15 respond with their motion to dismiss, and I just wanted
16 to make sure that we have some mechanism in place for
17 that to happen.

18 THE COURT: Who are they?

19 MR. HARVIS: They are Walter Swinson, and the
20 ESTATE OF Arthur Zimmer, and so Walter Swinson is a
21 County -- former County employee. So I was hoping that
22 perhaps they could give me a service address for that
23 individual, and I know that Mr. Corbett said he was
24 investigating the estate of the later Arthur Zimmer. So
25 perhaps they could just let us know the outcome of that,

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1 and --

2 THE COURT: All right. Well, the people who
3 would be -- and that you're looking to add here,
4 certainly have the right to be notified, and have some
5 input if they wished to, however -- well, obviously you
6 have to serve, you're going to have to also serve your
7 motions on those folks, too, so they have an opportunity
8 to see what you're doing, all right? Just so we're all
9 on the same page.

10 MR. CORBETT: Understood, your Honor, and just
11 to -- as you know, these -- the facts of this case
12 happened over, you know, 25 years ago. Arthur Zimmer is
13 deceased. We didn't do an investigation. What we're
14 trying to figure out is was there an estate at all? Was
15 it administrated? Did he have a will? We don't know any
16 of those answers, and the --

17 THE COURT: I understand that and --

18 MR. CORBETT: And the question I am getting to
19 is both officers are completely indemnified and held
20 harmless by the Village of Freeport. So the necessity to
21 even --

22 THE COURT: They still have a right to know.
23 Okay?

24 MR. CORBETT: Oh, understood, your Honor.

25 THE COURT: Go ahead.

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1 MR. CORBETT: And they should know. What I am
2 saying is even though we are moving to dismiss ultimately
3 on behalf of everyone, we're still ourselves trying to
4 get in touch with whoever is the proper person for
5 deceased Arthur Zimmer, to make sure that they're
6 allowing us to --

7 THE COURT: You mean the person who is handling
8 the estate?

9 MR. CORBETT: If there is an estate.

10 THE COURT: Okay.

11 MR. CORBETT: We're told he may have died, it
12 may have been a small, underneath the threshold.

13 THE COURT: All right.

14 MR. CORBETT: He may not have had a will.
15 We're trying to figure out what that even is, even if
16 there was an estate to begin with.

17 THE COURT: All right.

18 MR. CORBETT: It may have been an
19 administrative proceeding, we don't know.

20 THE COURT: Okay.

21 MR. HARVIS: And your Honor, I will just
22 mention that Arthur Zimmer's son, David Zimmer, also
23 worked, and he's still alive, and he is worked at the
24 Freeport Police Department also, so I had suggested that
25 was a good place to start in terms of his father's

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1 estate.

2 THE COURT: All right. I mean the key thing
3 here is you've got to get a last known address for
4 somebody get -- at least be notified here, so --

5 MR. HARVIS: Understood.

6 THE COURT: -- you'll take care of that.

7 MR. HARVIS: Thank you, your Honor.

8 MR. LOOMBA: Your Honor, can we raise two
9 issues here regarding parties? One is Dora Mullen (ph.),
10 who is the administrator of the estate --

11 THE COURT: Yes.

12 MR. LOOMBA: -- of Jerl Mullen.

13 THE COURT: Yes.

14 MR. LOOMBA: The County would like to move --

15 THE COURT: To vacate the default?

16 MR. LOOMBA: Yes, yes.

17 THE COURT: Yes. Okay.

18 MR. LOOMBA: It would --

19 THE COURT: I was paying attention, honest.

20 Okay?

21 MR. LOOMBA: Thank you, your Honor.

22 THE COURT: First of all, since there's an
23 issue here about the fact that they're going to move to
24 dismiss the claims against her anyway, can you see
25 yourself stipulating to vacate the default?

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1 MR. HARVIS: Sure.

2 THE COURT: So let's take care of that, all
3 right?

4 MR. LOOMBA: Great.

5 THE COURT: That's something else you will get
6 filed in the next two weeks.

7 MR. HARVIS: And then since we already served
8 her with the first amended complaint, she's down in North
9 Carolina --

10 THE COURT: Uh-hum.

11 MR. HARVIS: -- is that -- I just don't want to
12 make a technical error here. Do we need to re-serve her
13 then once we deem the second amended --

14 THE COURT: You need to serve her with the
15 second amended complaint, yes.

16 MR. HARVIS: All right. Sure.

17 THE COURT: Okay.

18 MR. HARVIS: I will take care of that.

19 THE COURT: All right.

20 MR. LOOMBA: And your Honor, just with respect
21 to Mr. Swinson, the -- he has been named in a caption,
22 right? Somebody from the plaintiff's office has typed
23 name in the caption but that's it.

24 THE COURT: Uh-hum.

25 MR. LOOMBA: So he hasn't been served with

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1 anything. He has not requested defense, and
2 indemnification from the County. The County Board of
3 Indemnification has not met to consider whether to
4 defend, and indemnify him. Nobody from the County's
5 attorney's office has sat and considered whether to hire
6 a law firm to represent him.

7 THE COURT: Yes.

8 MR. LOOMBA: Wilson Elser certainly hasn't been
9 contacted to represent him. So we -- I just wanted to
10 make sure that that was clear to the Court.

11 THE COURT: Well, I think -- I get that. Do
12 you have a way of communicating with him at all?

13 MR. LOOMBA: I would have to go through the
14 police department to get --

15 THE COURT: Okay.

16 MR. LOOMBA: -- try to get any address, your
17 Honor.

18 THE COURT: All right. I mean part of that --
19 what I am most concerned about is just getting notice to
20 these folks. I mean, the fact that potentially if this
21 motion to amend does not include him, if that's what
22 Judge Seybert decides, then all of this is a moot issue.

23 However, I still think he needs to at least be
24 notified that this amended complaint names him. So
25 there's got to be some way that somebody in there can

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1 find the last known address for him, all right?

2 MR. LOOMBA: Okay. We'll do that, your Honor.

3 THE COURT: All right.

4 MR. HARVIS: Your Honor, I am sorry, just
5 another technical issue, so assuming the stipulation is
6 filed, and then the second amended complaint is deemed
7 amended, we would then file summonses with the clerk the
8 same way we would normally do that, right?

9 THE COURT: Correct.

10 MR. HARVIS: Okay, great. Thank you.

11 THE COURT: Yeah, especially for any new party.
12 Somebody who is an existing party is a different story.

13 MR. HARVIS: Yep.

14 THE COURT: All right. Moving down the list
15 here, we're going to talk about paper discovery in a
16 minute but for the time being, I am staying all further
17 depositions until these issues are resolved.

18 There is still outstanding a pending spoliation
19 motion at DE-206. Obviously that was filed, I think back
20 in September, not filed in front of me. Here's what I am
21 going to have you do. I am going to terminate the notice
22 of motion that was filed in September, and you're simply
23 going to file a new notice, sometimes shortly, all right,
24 as soon as you can, which will then pull it up as a
25 pending motion before me.

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1 MR. HARVIS: Okay.

2 THE COURT: And I will proceed from there. I
3 do want to tell you, I took a quick look at the motion
4 papers. I'm a little bit concerned because there's some
5 citations to things like residential funding, which are
6 no longer good law. Residential funding is not the
7 measure of spoliation and damages at this point, which --

8 MR. HARVIS: Well, if I may, your Honor.

9 THE COURT: Go ahead.

10 MR. HARVIS: Yeah, thank you for bringing that
11 to my attention. I certainly was not aware of that, so I
12 apologize. I don't do a lot of sanction/spoliation
13 practice.

14 THE COURT: Unfortunately, I do a lot.

15 MR. HARVIS: Okay. Sure.

16 THE COURT: So go ahead.

17 MR. HARVIS: And I was just going to say, you
18 know, as the record as developed, I think that since your
19 Honor is going to terminate the notice anyway, it may
20 make more sense, rather than just refiling it, for us to
21 take a minute, and perhaps reconsider when the
22 appropriate juncture is for us to file that because as
23 we're learning more information, I just think it may
24 change the exact triangulation of that motion, and so --
25 because for example, we're learning that it may have been

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1 a Freeport number that was called, as opposed to 911, and
2 so while I think it might make more sense to just hold
3 off on that for a bit.

4 THE COURT: All right. All right. Then why
5 don't you do this? Just submit a letter to me that says
6 you're going to withdraw the existing motion without
7 prejudice, all right?

8 MR. HARVIS: We'll do that, your Honor. Of
9 course.

10 THE COURT: All right.

11 MR. HARVIS: And your Honor, that's because of
12 the amendments I guess, and the way ESI is treated, and
13 the new rules, is that the issue there?

14 THE COURT: Yeah, well when the Chin case came
15 in, it essentially brought in a new era because the
16 Second Circuit decided that, for example, simply because
17 you don't file a litigation hold, or don't serve a
18 litigation hold, that's no longer enough.

19 MR. HARVIS: Yeah.

20 THE COURT: It used to be automatic that it was
21 automatically gross negligence. That's not the standard
22 anymore.

23 MR. HARVIS: Got it.

24 THE COURT: In addition to which, you also have
25 to show, which is why residential funding is out the

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1 window, that whatever information you're claiming, or
2 documents you're claiming were spoliated, you have to be
3 able to show that they were -- that you have a way to
4 show that they would have been favorable to your case,
5 and would have helped your case proceed, which means you
6 have to have some evidence presented to that effect, not
7 just speculation. So --

8 MR. HARVIS: Sure, got it.

9 THE COURT: It's tougher these days --

10 MR. HARVIS: Yeah, yeah.

11 THE COURT: -- to get that kind of a --

12 MR. HARVIS: I kind of halfway got there
13 between the initial motion and the reply, but I just
14 didn't get a holistic enough understanding of it, so I
15 really appreciate that.

16 THE COURT: All right. Well, good. You'll go
17 back and take another look, okay?

18 MR. HARVIS: There we go.

19 THE COURT: All right. That brings us to the
20 existing state of paper discovery, and I know there's a
21 lot of dispute here. As far as the prior rulings that
22 Judge Brown made, I'm trying to understand if you're
23 still contending that there's noncompliance with his
24 orders.

25 MR. HARVIS: We are, your Honor, yes. I mean

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1 the most -- we were really at the preliminary phase of
2 just having exchanged initial demands and responses at
3 that time. So we have actually drilled down a lot in
4 terms of what specifically is outstanding.

5 But in terms of actual violations of what we
6 believe were discovery orders entered by Judge Brown,
7 it's really the personnel and disciplinary files of the
8 individual officers.

9 THE COURT: Right.

10 MR. HARVIS: Those were ordered to be disclosed
11 by all defendants.

12 THE COURT: Okay.

13 MR. HARVIS: And all we've received is only
14 from Nassau County, and it was I think 37 pages of
15 summary material, that just shows a number of complaints,
16 no underlying files, no personnel records.

17 THE COURT: Okay. Well, let me tell you, and
18 I've written a lot about this with respect to personnel
19 files generally, and then personnel files with respect to
20 police officers.

21 I don't wholly require anybody to turnover
22 a complete "personnel" file, for a whole host of reasons.
23 And this part of the background come out when I was in
24 practice, first of all, there are all kinds of things
25 contained in personnel files, including somebody's

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1 vacation schedule, somebody's 401(k), which is supposed
2 to be kept separately but nine times out of ten, are not.

3 And so what's relevant, as far as I am
4 concerned with respect to any police officer's personnel
5 file, is any prior disciplinary actions that have been
6 filed against that officer, whether it's oral, written,
7 formal, or informal, and also narrowed to the types of
8 allegations that made.

9 Like what's the basis here for the disciplinary
10 records in terms of your case. What is it that you're
11 looking for that's relevant to complaints made by your
12 clients at this point?

13 So I mean that focus has to narrow, and
14 honestly right now, I think it's important that you have
15 another discussion with counsel to see if you can narrow
16 this down, all right?

17 MR. HARVIS: Sure.

18 THE COURT: And as far as -- to the extent that
19 there are any written complaints, summaries are not good
20 enough. If there are written complaints, those
21 complaints themselves, even if to some extent they need
22 to be redacted, they are still subject to production, and
23 should be produced.

24 So I am going to have you talk to each other
25 further about that specific issue, and to the extent you

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1 still can't resolve the matter, if that's the case, then
2 what I want from you is whatever is specific, and I'm
3 going to have you file a Rule 37.1 motion, that's dealing
4 with an answer of specific response you got to a specific
5 discovery request.

6 And let me just point out to you because if I
7 get the motion in some format other than what I am about
8 to tell you, you're going to wind up getting it back, and
9 I would like to avoid that.

10 Rule 37.1 talks about how you present this type
11 of an objection or a motion to the Court, and so again,
12 because it focuses on an answer to a specific
13 interrogatory, or a specific document request, you're
14 required first of all to state verbatim what the request
15 was. Underneath of that, state verbatim the response you
16 received from opposing counsel, and underneath of that,
17 your particularized objection to that specific response.

18 I get motions from people all the time on
19 discovery disputes where somebody wants to give me ten
20 pages of legal argument, and then starts talking to me
21 about the actual response to the request. If you do
22 that, you're going to wind up getting it back. Please
23 don't give me three pages of background. I don't need
24 it. I know what the case is about. Just get right to
25 the heart of the matter.

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1 Start with it's this involves document request
2 number three. Here's what we asked for, here's what they
3 responded, here's why it's not sufficient. It's not
4 privileged. It's not -- whatever the reason is that you
5 believe you're entitled to that information, and you're
6 not getting it. That's where the law goes. If you want
7 to cite to some case, it goes in that specific objection.

8 All of this changed in December of 2015 when
9 the change to the Federal Rules took place about
10 proportionality, and so keep that in mind, as well.
11 That's the framework you're working from.

12 I will also caution you, and you'll see this in
13 my rules, normally any letter motion that gets made to me
14 is limited to three pages. The only exception are for
15 motions that are filed under 37.1, and the reason is by
16 the time you get two of these down, or three of these
17 down, you're at the three-page limitation, just
18 responding.

19 And so that three-page limitation is waived on
20 this type of a motion but just for an example, in the
21 last couple of weeks, I've gotten a 60-page 30.1 motion,
22 which went right back to counsel, because if that's the
23 state of affairs you're telling me that you can't agree
24 on, then what I'm likely to do is call all of you in
25 here, have you go to what I refer to kindly as the "wood

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1 shed" behind the courtroom, which is our attorney
2 conference room, and you'll sit here with my law clerk
3 until you work it out, all right?

4 If it takes all day, or two days, or three
5 days, that's what it does. So you've got to learn to
6 talk to each other, and try to reach a resolution even if
7 it means some compromise, so that's what you need to do,
8 all right?

9 MR. HARVIS: All right.

10 THE COURT: Get me -- I'm not sure I want to
11 get so granular today that we're down to, you know, each
12 specific request that was made that you don't feel was
13 properly responded to, but in the framework of what I
14 have just given you, I certainly expect that you'll have
15 a further conversation with each other, and try to work
16 out what you can work out, all right?

17 To the extend that you need to make any Rule
18 37.1 motions, I'm going to set a limitation here of 30
19 days. If I don't get it in 30 days, I'm going to deem
20 the objection waived, okay? I don't want these things
21 lingering forever.

22 And depending on what's in there, I may bring
23 you back in, and rule from the bench, and just go through
24 them systematically, and say here's what's happening.

25 All right. So I think that exhausts my list,

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1 so I want to go to each one of you, and you'll tell me
2 and just remember what I said, too, depositions are on
3 hold until we get these things worked out, which means
4 also until you get an answer on the motion to dismiss the
5 second amended complaint.

6 All right. Let me start with plaintiffs. Mr.
7 Harvis, is there anything else we need to address today?

8 MR. HARVIS: Well, I mean, I guess is your -- I
9 was going to kind of give a broad strokes overview of
10 what we saw like the top line discovery issues, but if
11 your Honor would prefer us to present that in letter
12 form, we could certainly do that.

13 THE COURT: Yes, I would prefer that if you
14 don't mind.

15 MR. HARVIS: Okay.

16 THE COURT: Okay?

17 MR. HARVIS: Sure. The only question that I
18 have then is with respect to -- I guess there's the one
19 open issue that we saw is that we saw -- a lot of these
20 events take place in station houses. We have the events
21 in the Freeport station house on the date of the murder,
22 and then we have this whole interrogation and coercion,
23 confession allegation, that takes place in the Nassau
24 County Homicide Squad.

25 We served Rule 34 demands for inspection of

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1 those two station houses on both defendants, and Nassau
2 County has agreed that we're just going to set a date and
3 do that. We had gotten some push back from Freeport that
4 they don't think we should be allowed to do that. And we
5 asked to see -- when we go to the station house, the
6 records, whatever original records they have, station
7 house logs from back then, that kind of showed who was in
8 the precinct, and I just wanted to make sure that your
9 Honor's stay would allow us to proceed with that
10 inspection while we are working this out.

11 THE COURT: I don't have a problem with that,
12 but I will tell you this. I have more and more filings
13 by precincts as to new security measures that have been
14 put in place for a whole host of reasons, which don't
15 permit people who have lawsuits to come in and inspect.

16 What has occurred, and what the defendants
17 often have preceded with is providing photographs of the
18 spaces that you're looking for. I realize it's not
19 exactly a preferred choice from your end, but it's
20 certainly better than nothing at this point. If you can
21 work this out with counsel, you'll work it out, and if
22 there's a problem, then you'll come back to me.

23 MR. CORBETT: And your Honor, that was exactly
24 -- just to -- that's exactly the reason why Freeport was
25 against allowing that. There are security measures in

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1 place for a whole host of reasons for access, things to
2 that nature. We have no problem providing photographs.
3 Just know that, you know, this happened in 1994. We're
4 providing photographs of the current space, and we'll
5 just let them know that this may have changed, obviously,
6 over the course of 25 years, but we have no problem
7 taking photographs so that they could see the physical
8 locations, but we do have an issue with security
9 concerns.

10 THE COURT: The only thing I would ask you to
11 check is to find out whether or not -- and again, this
12 may be an exercise in futility, but just to find out from
13 your clients, whether or not there were any photographs
14 of the building, and the office at that point in time,
15 and if there were, I would have you produce those as
16 well.

17 MR. CORBETT: We absolutely will. That
18 actually came up on a completely unrelated case where we
19 were able -- there were photographs of the time in
20 question, and those are what we did provide to
21 plaintiff's counsel. We have no problem doing that.

22 THE COURT: As to this log, let me ask you
23 this, Mr. Corbett, what about the prospect of the police
24 department allowing you to take possession of the log, so
25 that counsel could come to your office to look at it, as

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1 opposed to going to the police station?

2 MR. CORBETT: Yeah, I don't foresee an issue
3 with that whatsoever.

4 THE COURT: Okay.

5 MR. CORBETT: I may just have to have the
6 chief, or assistant chief with me --

7 THE COURT: That's fine.

8 MR. CORBETT: -- because of, you know, leaving
9 the log behind.

10 THE COURT: Yes.

11 MR. CORBETT: I could check with the client as
12 far as access records because I know they have a specific
13 protocol about how the books and records leave the
14 department--

15 THE COURT: Right.

16 MR. CORBETT: But I am pretty confident we
17 could probably resolve something --

18 THE COURT: Good.

19 MR. CORBETT: -- towards that vein.

20 THE COURT: Good. That's worked out in the
21 past, so I would hope you can come to some resolution
22 after you talked to your clients, okay?

23 MR. CORBETT: Understood, your Honor.

24 THE COURT: All right.

25 MR. HARVIS: Your Honor, yeah, just I guess two

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1 short things before I concede the floor. One is just to
2 respond to your Honor's point about proportionality and
3 the new rules, this is a case involving someone who spent
4 23 years in prison, before being exonerated, so I just --
5 I feel like the proportionality can kind of go both ways.
6 You know, sometimes it can act to limit discovery, and
7 sometimes where the case in controversy is very
8 significant, I think it can sort of increase the access
9 to discovery. I just wanted to make that point to your
10 Honor.

11 THE COURT: Uh-hum.

12 MR. HARVIS: And then just one issue that I
13 thought maybe should come before we file our 37.1 letter,
14 of course we'll try and work these issues out. We've
15 been in active discussions.

16 It's just the issue of the nonresponse, the no
17 written responses from Freeport to demands that were
18 served on January 14th of 2020. I just feel like we're
19 basically giving them another 30-day vacation of just not
20 even -- forget objections, they're not even giving us
21 written responses, and these are directed to the Village
22 of Freeport, so they don't concern a specific defendant.

23 THE COURT: All right. Do you want to respond
24 to that Mr. Corbett?

25 MR. CORBETT: Yes, your Honor. There were

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1 multiple interrogatories served on various defendants.
2 We were in the process of dealing with that, and then
3 obviously the amended complaint came in.

4 We did speak yesterday, Mr. Harvis and I. We
5 asked for an addition two weeks to 30 days, just to
6 narrow down Officer Melendez, and obviously we're having
7 trouble figuring out who we speak to, and deal with, to
8 get to Artie Zimmer, who obviously has passed away. And
9 that's where the delay has been.

10 THE COURT: All right.

11 MR. CORBETT: And to the --

12 THE COURT: But you're willing to do it at this
13 point, so my directive will be --

14 MR. CORBETT: My preference, honestly --

15 THE COURT: -- I will give you two weeks.

16 MR. CORBETT: -- is everything stayed as it
17 relates to Freeport so we can get this worked out, but I
18 understand what your Honor is saying today. And if we
19 have to, we will, and I'm sure we do, we will respond to
20 those interrogatories.

21 THE COURT: Fine. Whatever was served. I'm
22 giving you two weeks, all right?

23 MR. CORBETT: And just your Honor, that would
24 be for the people -- I know we're going to work out a
25 stip --

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1 THE COURT: Yes.

2 MR. CORBETT: -- but I think we all understand
3 who the parties are now.

4 THE COURT: Right.

5 MR. CORBETT: That would be just for the
6 parties remaining after we work out the second amended
7 complaint.

8 THE COURT: Correct. That's correct.

9 MR. CORBETT: Thank you, your Honor.

10 THE COURT: Okay.

11 MR. HARVIS: Thank you, your Honor.

12 THE COURT: All right.

13 MR. HARVIS: And the rest of it, we'll save for
14 our letter. Thank you very much.

15 THE COURT: All right. Very good.

16 MR. LOOMBA: Your Honor?

17 Mr. Loomba, you're up.

18 MR. LOOMBA: Yeah, thank you, your Honor.

19 So one item that we would like to see if we
20 could have addressed by the Court is the list of exhibits
21 to the proposed second amended complaint. In paragraph
22 20, it says that the plaintiff attaches the following
23 exhibits. There is a link to a website, and then there
24 is a list of 56 exhibits, and I guess we have some
25 concerns that if that link is an active link that the

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1 public could access, that there might be some documents
2 here that we don't think are appropriate for public
3 dissemination.

4 THE COURT: All right. I understand that
5 concern. I mean, is there some way to -- as opposed to
6 necessarily having this in the public record, in terms of
7 it being a website, or -- to access? I mean, can you put
8 it some kind of a DropBox, or something else that would
9 be not so accessible to other people?

10 MR. HARVIS: Yeah, I mean, well, I just would
11 say, anything that they marked confidential, we did not
12 include in this list. So we did believe that there's a
13 presumptive right of public access to these kinds of
14 judicial documents. However, the Court would like to
15 include them is --

16 THE COURT: I think you should talk to each
17 other, because I don't think he's talking about all of
18 them, and he says that there are some documents that they
19 believe are problematic, right?

20 MR. HARVIS: This is the first we're hearing of
21 it.

22 THE COURT: Okay.

23 MR. HARVIS: So we're happy to confer on it.

24 THE COURT: So you talk to each other.

25 MR. LOOMBA: We can -- we'll confer, your

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1 Honor. Thank you.

2 THE COURT: Okay. Anything else?

3 MR. CORBETT: Your Honor, just you know, I want
4 to try and expedite and make this efficient going forward
5 because it really hasn't been an efficient case to now.
6 I kept hearing an indication of letter motion, letter
7 motion. Is he referring to a 37.1 if needed, or are we
8 just going to get into another motion campaign back and
9 forth, because I am concerned. My client is expending
10 significant resources on a case that I understand we
11 still have to get to the merits before Judge Seybert, we
12 may ultimately not be here.

13 THE COURT: Okay. But my response to this was
14 I expect you all to confer and to whittle down what's
15 going to eventually have to be filed.

16 MR. CORBETT: Understood, your Honor. Thank
17 you. That was my understanding.

18 THE COURT: Okay? Absolutely.

19 Anything else? All right. Let me just
20 explain, we're going to issue a minute order that's
21 simply just going to state the rulings that I have made
22 today. If you need something more than that, if you want
23 the amplified record, you are more than welcome to
24 contact my courtroom deputy. I'll give the phone number
25 in a minute. She'll be out here in a minute, too. If

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1 you want the transcript, you can talk to her, and she'll
2 work out a way for you to order it, all right, if you
3 need it. It's fine.

4 All right. One last thing because I think I
5 didn't say this about 37.1, once you file that, please
6 take note on the defense side, you've got to respond to
7 that in the same fashion. So don't again give me like
8 two paragraphs of your objections. You need to go
9 through each one, as the plaintiff will have done, and
10 give me whatever your response is to them individually,
11 all right? In the same format as the 37.1 plaintiff side
12 is done, okay? All right.

13 This is my courtroom deputy, Mary Ryan, and as
14 I said, if you want the transcript, you can speak to her,
15 all right?

16 MR. HARVIS: Thank you for your time, your
17 Honor.

18 THE COURT: Thank you, all.

19 MR. CORBETT: Thank you, your Honor.

20 (Matter Concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 20th day of March, 2020.


Linda Ferrara

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